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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 569

I. L. F. Y. CO.,

Appellant,

against

THE TEMPORARY STATE HOUSING RENT COMMISSION and MARY ALICE JONES,

Appellees.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

MOTION TO DISMISS OR AFFIRM

HAROLD ZUCKER,
Attorney for Appellee,
State Rent Commission,
280 Broadway,
New York 7, New York.

EDWARD V. ALFIERI,
Deputy Counsel,
of Counsel,
on the brief.

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On Appeal From The Court Of Appeals Of The State of New York

MOTION TO DISMISS OR AFFIRM

Appellee, the New York State Rent Administrator, pursuant to Rule 16 of the revised rules of the Supreme Court of the United States, moves that the appeal taken herein from the final judgment of the New York Court of Appeals be dismissed or, in the alternative, that the judgment appealed from be affirmed.

Opinions Below

The Supreme Court, New York County, wrote a memorandum opinion (N.Y.L.J. May 3, 1961, p. 13, c. 7, 8). Pur-

suant to Sec. 588, subd. 4 of the Civ. Prac. Act, plaintiff took a direct appeal to the New York Court of Appeals which court wrote an opinion reported in 10 N. Y. 2d 263.

Jurisdiction

Jurisdiction is invoked under Section 28 U. S. Code, Section 1257(2).

Questions Presented

Simply stated, the questions which the appellant seeks to bring before the Court may be reduced to the following:

a) Do the challenged amendments to the Law have a reasonable relation to the execution of a concededly lawful purpose;

b) Did the appellant have a vested interest in the Law prior to its amendment so as to entitle it to have the Law remain unaltered, or, in the alternative, to have any amendments to the Law made inapplicable to it.

Statement

This proceeding comes before this Court by virtue of a Notice of Appeal filed from a final order and judgment of the New York Court of Appeals made on July 17, 1961. Involved is a constitutional challenge against two of the amendments in the 1961 extension of the New York State Emergency Housing Rent Control Law and the retention of the statutory provision that the law as amended be applied to pending administrative proceedings. (For text of challenged provisions, see Appendix, p. 30.)

Under the prior statute, a purchaser of controlled housing could have applied immediately for building-wide rent increases based on his own purchase price. Increases so

granted would be effective no later than two months from the filing date of the application or six months prior to the order granting the increases, whichever was the later.

As amended, the law requires a purchaser to own the property at least six months before application for a "fair return" increase may be made. Moreover, no order granting an increase based on such sales price may be effective until one year from the date of purchase.

In addition, there was deleted from the law a provision, inserted four years before, authorizing rent adjustment orders to be made effective retroactively.

As noted in the opinion of the Court of Appeals (Appendix, pp. 21-27):

> "Appellant does not dispute the continuance of the housing emergency which is the predicate for these housing rent control laws. It cannot deny that prohibitions against rent increases may in an emergency be constitutional although they reduce the value of the property regulated and deprive its owner of what otherwise would be considered a fair return (see *Bowles* v. *Willingham*, 321 U. S. 503, 517; *Teeval Co.* v. *Stern*, 301 N. Y. 346, 362, cert. den. 340 U. S. 876)."

In dismissing the appeal, the Court held that apart from "an exceedingly strong presumption of constitutionality" and "a further presumption that the Legislature has investigated for and found facts necessary to support the legislation", there was an affirmative presentation of facts to the Legislature which "shows a reasonable basis for legislative action • • •. Thus, the writing of these precautions into the law was, as the Legislature saw it, reasonably necessary for the public welfare." With respect to appellant's assertion that its constitutional rights were infringed when the 1961 statute was made applicable to its earlier purchase, the Court held that "ap-

pellant did not have in any particular rule an interest so vested as to entitle it to keep the rule unchanged."

Manifestly, such rulings present no substantial Federal questions. Indeed, the challenged amendments fall completely within the special competence of the New York State Legislature to enact statutory procedures reasonably adapted to a recognized and undisputed public need. This Court repeatedly has denied certiorari or relief on the merits in substantially identical circumstances. This appeal, too, should be dismissed or, in the alternative, affirmed. (*Patterson* v. *Stanolind Co.*, 305 U. S. 376, 379; *Levering & Garrigues Co.* v. *Marrin*, 289 U. S. 103, 105, 106.)

Argument

1. Legislative Background

Some of the facts of which this Court may readily take judicial notice and upon which the Legislature based its determination to adopt the challenged remedial legislation are to be found in four separate comprehensive documents:

(a) The Survey Report on the Rental and Housing Market dated January 1961* (hereinafter referred to as The Herman Survey Report);

(b) The Report of the Five Man Committee dated February 24, 1961 (McKinney's 1961 Session Laws of New York, p. 1985 et seq.);

(c) The Minutes of the public hearings held on March 2, and March 3, 1961 by the New York State Temporary Commission to Study Rents and Rental Conditions; and

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* For the Court's convenience, copies are submitted with the motion.

(d) The Report of the New York State Temporary Commission to Study Rents and Rental Conditions, dated March 23, 1961 (McKinney's 1961 Session Laws of New York, p. 1971 et seq.).

However, before turning to the pertinent parts of these documents, brief reference first will be made to the rent control legislation in New York State which preceded the enactment of the amendments here challenged.

A. Sales Price

Until 1957, the Emergency Housing Rent Control Law was silent regarding the use of a resale price as the valuation base in fair return proceedings for building-wide rent increases. Instead, there was a general provision vesting the State Rent Administrator with discretion to adopt as a property's valuation any bona fide sales price since March 15, 1951, in lieu of its equalized assessed value [e.g., Laws of New York, 1953, ch. 320, 321, § 4(4)(a)(1)]. In the 1957 re-enactment of the rent law, the Legislature eliminated that discretionary authority and mandated that the primary valuation of a property was its most recent bona fide sales price which met certain other requirements not here relevant. In so doing, however, it took express cognizance of trends in the resale of controlled housing which warranted the imposition of certain safeguards. Specifically, to prevent the possible spiralling of rents resulting from the use of a repeat sales price immediately following the granting of rent increases based upon an earlier sales price, the Legislature reserved to the Administrator the following discretion:

"... where there has been more than one such bona fide sale within a period of two years prior to the date of the filing of such application the commission may disregard the most recent of such sales only if a prior sale within such two-year period was adopted as the

valuation of the property in a proceeding under this subparagraph." [Laws of New York, 1957, ch. 755, §4(4)(a)(1)]

In recommending this change, the Temporary Commission to Study Rents and Rental Conditions said:

> ". . . such amendment will require the use of recent bona fide sales prices as a more accurate reflection of value in fair return applications and which will, through the two-year provision, provide the Administrator with authority to curb any cycle of successive sales followed by applications for adjustments." (McKinney's 1957 Session Laws of New York, p. 1545)

B. Retroactivity

Under the Federal rent program, orders increasing maximum rents originally were made effective as of the date of issuance. Orders decreasing maximum rents were made effective as of the next rent payment date. Commencing January 1948, the Federal regulations were amended to provide that orders increasing maximum rents would be effective as of the date of filing the landlord's petition (Temporary State Housing Rent Commission 1950 Survey of Residential Rents and Rental Conditions in the State of New York, pp. 285, 286).

In its 1950 report recommending the enactment of a State rent control law to supersede the co-existing Federal and City rent laws, the Temporary Commission to Study Rents and Rental Conditions said:

> "The feeble and apparently insincere efforts to administer or enforce the law by the Office of Housing Expediter were viewed with suspicion by the Commission and by tenants when more than 13,000 retroactive so-called 'fair net operating income' increases were granted suddenly some of which were dated back approximately two years.

"The din raised by protesting tenants caused widespread adverse newspaper comment. Many aroused tenants who were confronted with the necessity of paying substantial accumulative increases without any prior warning or notice, organized themselves into protesting groups." (McKinney's 1950 Session Laws of New York, p. 597)

Consequently, from the inception of State rent control in 1950 and until 1957, the statute provided for prospective application only of all rent adjustment orders (e.g., Laws of New York, 1955, ch. 685, § 4, subd. 6).

However, in renewing rent control in 1957, the Legislature took cognizance of the Rent Agency's increasing workload and backlog of applications which was causing an ever increasing time interval between the filing and disposition of such applications. Primarily because a survey of pending fair net return cases presaged a worsening situation, it was the legislative judgment to permit retroactivity for a maximum of six months provided such period did not antedate two months from the filing of the application. The Temporary Commission to Study Rents and Rental Conditions recommended this modification in the following language:

"Another amendment is intended to expedite the processing of fair return applications, and applications by tenants for rent reductions for failure by landlords to maintain services. This amendment will make orders for adjustments effective not later than two months after the application is filed. The amendment recommended for adoption will, however, limit retroactive effect on orders to a maximum of six months. It will permit a tenant to pay arrearages in monthly installments and is similar to the policy now followed by the Administrator where he revives an order on protest." (McKinney's 1957 Session Laws of New York, p. 1545)

Unfortunately, and undoubtedly as a result of a still increasing case load of fair return applications, no substantial progress was made during the ensuing two years toward reducing the time interval involved in processing these cases. Recognition of this fact was contained in Governor Rockefeller's Special Message to the Legislature on February 9, 1959, wherein he stated:

> "4. Administrative procedures and regulations. The procedures and regulations of rent control are involved and frequently burdensome for both tenants and landlords. It is essential that these procedures and regulations be made to operate as reasonably, as simply and as expeditiously as possible.
>
> "Accordingly, the State Rent Administrator will carefully review existing administrative procedures and regulations to achieve greater simplicity, fairness and operational efficiency." (McKinney's 1959 Session Laws of New York, p. 1704)

While awaiting the outcome of the administrative action, the Legislature renewed rent control in 1959 for two years without change in the statutory provisions with which we are here concerned.

Since 1959, the State Rent Administrator has initiated a number of new procedures and techniques in fair return cases. While no useful purpose would be served at this time by detailing the nature and effect of these modifications, it should be noted that they have more than halted the growing time lag previously experienced. Moreover, in reinstating prospectivity as provided prior to the 1957 amendment, the Legislature acted with full knowledge of these improved procedures as well as with full approval of the State Rent Administrator and the Temporary Commission to Study Rents and Rental Conditions.

C. The Herman Survey Report

On January 19, 1961, State Rent Administrator Robert E. Herman transmitted to Governor Rockefeller the Survey Report on the Rental and Housing Market. As stated in the Preface (p. 2):

> "This report is submitted in response to that directive (in the Special Message) and is designed to assist the Governor and the Legislature in their consideration of the future course of rent control."

As was expressly noted in the subsequent reports of the Governor's Five Man Committee and the Temporary Commission to Study Rents and Rental Conditions, this 71-page document, consisting of narrative and charts, was heavily relied upon in formulating the recommendations made by both of these committees.

D. The Five Man Committee Report

On November 4, 1960, Governor Rockefeller appointed a special five man committee to study and evaluate two separate and distinct phases of the residential rent control law. Pertinent to this appeal is the one involving the provisions governing the sales price basis in fair return proceedings which, as the Special Committee noted "(has) been the subject of widespread interest and discussion." (McKinney's 1961 Session Laws of New York, p. 1986)

Headed by the State Housing Commissioner, the Special Committee included State Rent Administrator Herman, the Chairman of the Temporary Commission to Study Rents and Rental Conditions, the Chairman of the Joint Legislative Committee on Housing and Multiple Dwellings, and the Deputy State Industrial Commissioner.

With respect to sales price evaluation, the Special Committee stated:

> "During the course of this Committee's conferences, claims were made that a widespread practice had developed whereby rent controlled buildings were being sold and resold at inflated prices, and that each buyer was obtaining rent increases based on his own purchase price." (McKinney's 1961 Session Laws of New York, p. 1987)

On the basis of its own investigation and the Herman Survey Report, the Committee found:

> ". . . There is obviously little support in fact for the assertion that a 'widespread practice' exists of 'repeated sales' resulting in 'spiralling rents'.
>
> "This is not to say, however, that other abuses and inequities have not arisen under the present statutory provision with respect to the use of a sales price evaluation." (McKinney's 1961 Session Laws of New York, p. 1988)

It was to curb these "other abuses" that the Committee recommended the package of amendments to the statute. The stated purpose, was "to check any untoward trend toward the use of an inflated sales price as a basis for obtaining a rent increase." (McKinney's 1961 Session Laws of New York, p. 1987)

With respect to the one statutory amendment here challenged, the Committee stated:

> "(1) The Law Should Be Amended To Require One Year's Ownership By The Landlord Prior To The Effective Date Of Any Rent Adjustments Based On Sales Price. And to Prohibit Filing For Six Months Following The Date Of Such Ownership And To Eliminate The Present Requirement Of Up To Six Month Retroactive Rent Payments By Tenants.

"The law should be amended to require that where there has been a bona fide sale of property, no rent adjustment under the fair return provision of the law based upon the sales price shall be effective until after one year from the date of the sale, and that the landlord be prohibited from filing his application for a rent adjustment based upon such sales price until six months following date of the sale. The adoption of these recommendations would also obviate the present requirement that tenants make retroactive rent payments for a period as long as six months—a requirement which has proved burdensome and complex for both tenants and landlords." (McKinney's 1961 Session Laws of New York, pp. 1989, 1990)

E. The Legislative Public Hearings

Following widely circulated notice to the public, the Temporary Commission to Study Rents and Rental Conditions conducted hearings on March 2, and March 3, 1961 on the need to continue or modify residential rent control. As noted in the Commission's Report:

"At the last public hearing many of those who came to Albany to be heard were unable to be heard because of the necessity of meeting bus, train and plane reservations. It was decided, therefore, to hold the hearing on different days, to give an entire day to landlords and give equal time to tenants to express their views. March 2, 1961 was announced as the day reserved for tenants. The place of the hearing was Chancellor's Hall in the Education Building in Albany directly opposite to the Capitol. The hearing began promptly at 1:00 o'clock and continued without recess until 7:00 P. M. More than a thousand individuals overflowed the Hall. Thirty-nine speakers appeared for themselves or as representatives during the six hours

of the hearing. Many others filed briefs. The transcript of this phase of the hearing covers 173 pages.

"One of the early appearances was that of the State Rent Commissioner and Administrator . . ." (McKinney's 1961 Session Laws of New York, p. 1976)

In a prepared statement which was read into the record, Administrator Herman said with reference to the areas here pertinent:

"On January 19, 1961, I submitted my Report on the Survey of the Rental and Housing Market. This survey, called for by Governor Rockefeller, in his Special Message to the Legislature of February 9, 1959, in my opinion, provides a sound basis of fact upon which to determine the future course of residential rent control, and its continued administration with fairness and equity to both landlords and tenants.

• • • • •

"III. *Recommendations of Governor's Committee on Sales Price and Eviction Controls*

The Law should be amended to incorporate the specific recommendations of the Governor's Five Member Special Committee, as submitted on February 27, 1961, with respect to both the Sales Price Valuation of properties in applications for rent increases under the Fair Return provision, and Eviction Controls in demolition applications to construct additional housing. These recommendations call for:

"A. *Sales Price Valuation in 'Fair Return' Cases*

(1) Amending the law to require one year's ownership by the landlord before the granting of any rent adjustment based on his sales price,

to prohibit the filing of an application for such adjustment prior to six months of such ownership, and to eliminate the present requirement of up to six months retroactive rent payments by tenants.

(2) Incorporating specific statutory criteria designed to prevent possible abuses through abnormal financing.

(3) Advancing the sales price date to bar the use of 'old' sales prices which no longer reflect current value.

• • • • •

"IV. *Elimination of Retroactivity*

The Law should be amended to eliminate retroactivity in orders adjusting maximum rents and to provide that such orders be effective not earlier than the date of issuance.

Because of delays in processing fair return applications, the Law was amended in 1957 to provide for retroactive payments of rent adjustments. Recent administrative improvements and other operating efficiencies have now reduced the need for this requirement. In addition, this recommendation conforms with the findings of the Governor's Five Member Special Committee with respect to applications for rent adjustments under the sales price provision of the Law. Such remedial action would recognize the burdens and complexities of retroactivity in orders which have been experienced by both tenants and landlords."

(Transcript of Hearing, March 2, 1961, pp. 9-12)

The Administrator was both preceded and followed by many legislators who specially attended the hearing to make their views known to the Commission members.

The following excerpts express the unanimous tenor of their views and are typical of the statements they all made:

> "Apartment buildings are changing hands at an alarming rate and at such spiralled prices that a six-story elevator apartment building built about 25 or 30 years ago which had a value four years ago of 6 times the annual rent is now being sold for 11 times the annual rent. Almost double and why not? The tenants are stuck with the tab." (Transcript of Hearing, March 2, 1961, p. 3)

> "It is obvious that since the Rent Commission determines a fair net return based on the purchase price, then the landlord does not care what the purchase price may be because the Rent Commission guarantees him an 8% return." (Transcript of Hearing, March 2, 1961, p. 4)

> "Now another section of the Law supposedly designed to grant legitimate landlords plagued by increased costs a fair rent increase, has become instead a lure to unconscionable speculators. These operators purchase buildings at deliberately inflated prices, knowing that they can pass their bad bargain onto the tenants."

> (Transcript of Hearing, March 2, 1961, pp. 96-97)

The Mayor of the City of New York had a prepared statement read for him in which he said:

> "And it is increasingly the practice to sell rent-controlled real estate at inflated prices which bear little relation to the existing rent rolls or market value. When this happens, the owner can apply for a hardship rent increase the day after he buys the property, and in some cases this has resulted in increases up to

40%, to be spread out at the rate of 15% a year until the 40% is reached. And there is nothing to stop another sale two years later at another inflated price, so that the same cycle can start all over again, even before the previous rent increase has gone fully into effect." (Transcript of Hearing, March 2, 1961, p. 68)

Holding aloft offerings of property for sale, the spokesman for the Tenants' Association of New York concluded his presentation thusly:

"Now, I also have proof here how they are advertising properties. 'Owner's bills and records will be turned over to purchaser for hardship application.' The attorneys representing these speculators go to the Rent Commission and they tell the hearing officer, 'Get us all the properties you can like this, we will buy them from you, they are bargains.'" (Transcript of Hearing, March 2, 1961, p. 42)

F. The 1961 Legislative Commission Report

In making its recommendations to the Legislature, the Temporary Commission to Study Rents and Rental Conditions relied upon and quoted extensively from the Herman Survey Report, the Five Man Committee Report and its own public hearings. As stated in its Report:

"It was only after careful consideration of all the testimony that the Commission arrived at its determination to make the recommendations hereinafter set forth." (McKinney's 1961 Session Laws, of New York p. 1977)

The recommendations therein made were precisely those recommended by State Rent Administrator Herman and the Five Man Committee. All were thereafter adopted by the Legislature, including the amendments here under attack.

It is of interest to note that the Minority Report differed in this regard only to the extent that even more stringent restrictions were demanded (see McKinney's 1961 Session Laws of New York, p. 1982).

2. No Substantial Federal Question is Presented

The preceding references to the massive data considered by the Legislature overwhelmingly demonstrated the need "to check any untoward trend toward the use of an inflated sales price as a basis for obtaining a rent increase" (McKinney's 1961 Session Laws of New York, p. 1987).

All this evidence clearly pointed in one direction: More and more emphasis was being placed by both buyer and seller on the fact that, immediately following transfer of title, an application could be filed demanding building-wide rent increases based upon a six per cent return on the sale price, with the increases becoming effective two months thereafter.

Indeed, as was stated at the public hearing—and a matter of common knowledge in the rent control field—it was becoming more and more commonplace for owners to offer their properties with the advertised feature that income and expense schedules were available for the purchaser's "hardship application."

It was apparent to the Legislature—as it was to all knowledgeable individuals and groups studying this purely local State problem—that the pivotal reason for these excesses was the almost immediate pass along of the costs to the tenants. Hence, the decision to defer the time within which the purchaser could seek and obtain such recoupment. The consensus was that such action would eliminate many of the abnormalities being encountered in sales and would also curb the inflation of the sales price itself. The only dispute among most authorities was the

extent of the restrications to be imposed (e.g., Minority Report of the Legislative Commission, *supra*).

The courts may not be concerned with questions as to the reasonableness, wisdom, propriety, or desirability of such a statute; nor may they substitute their judgment for that of the Legislature so long as there can be discovered "any state of facts either known or which could reasonably be assumed" to afford support for the legislative decision to act. *United States* v. *Carolene Products Co.*, 304 U. S. 144, 154; *East New York Saving Bank* v. *Hahn*, *supra*, 326 U. S. 230, 234; *South Carolina Highway Dept.* v. *Barnwell*, 303 U. S. 177, 191; *Borden's Farm Products Co.* v. *Ten Eyck*, 297 U. S. 251, 263.

In *East New York Saving Bank* v. *Hahn*, *supra*, a constitutional challenge was directed against the mortgage moratorium statute, originally enacted in 1933, and extended to July, 1944 by Laws of New York, 1943, Ch. 93. Plaintiff urged that "the serious depression and emergency . . . no longer existed at the time of the enactment of Ch. 93 of L. 1943, had not existed for several years and does not now exist." This Court in affirming wrote (p. 234):

> "Appellant asks us to reject the judgment of the joint legislative committee, of the Governor, and of the legislature, that the public welfare, in the circumstances of New York conditions, requires the suspension of mortgage foreclosures for another year. On the basis of expert opinion, documentary evidence, and economic arguments of which we are to take judicial notice, it urges such a change in economic and financial affairs in New York as to deprive of all justification the determination of New York's legislature of what New York's welfare requires. We are invited to assess not only the range and incidence of what are claimed to be determining economic conditions insofar as they affect the mortgage market—bank deposits and war

savings bonds; increased payrolls and store sales; available mortgage money and rise in real estate values—but also to resolve controversy as to the causes and continuity of such improvements, namely the effect of the war and of its termination, and similar matters. Merely to enumerate the elements that have to be considered shows that the place for determining their weight and their significance is the legislature not the judiciary. * * *"

The courts have uniformly and consistently held that the judicial function in testing statutory constitutionality is limited to the inquiry of whether there is any rational basis upon which the Legislature could have made the challenged classification. As was said in *Clark* v. *Paul Gray, Inc.*, 306 U. S. 583, 594:

> "The determination of the legislature is presumed to be supported by facts known to it, unless facts judicially known or proved preclude that possibility (Standard Oil Co. v. Marysville, 279 U. S. 582, 584; Borden's Farm Products Co. v. Ten Eyck, 297 U. S. 251, 263; South Carolina Highway Dept. v. Barnwell Bros., 303 U. S. 177, 191-192; United States v. Carolene Products Co., 304 U. S. 144, 153-154). Hence, in passing on the validity of the present classification, it is not the province of a court to hear and examine evidence for the purpose of deciding again a question which the legislature has already decided. Its function is only to determine whether it is possible to say that the legislative decision is without rational basis."

It is apparent that the amendments here challenged have a direct relationship to the salutary objective intended. Indeed, on the basis of the factors here presented, it is manifest that the Legislature acted with extreme wisdom. It is long since settled that an emergency rent control statute—whether enacted by a state in the exercise of its

police power, or the federal government in the exercise of its war power—need not provide for any "fair return" whatever to the individual landlord, so long as "generally fair and equitable" rents are provided for. Just such laws, as we have noted, with no "fair return" provision whatever, were upheld by this Court—*Bowles* v. *Willingham*, 321 U. S. 503 (the Emergency Price Control Act of 1942)—and by the New York Court of Appeals—*Teeval Co., Inc.* v. *Stern*, 301 N. Y. 346, cert. den. 340 U. S. 876 (the 1950 Emergency Housing Rent Control Act).

With respect to appellant's final contention we refer to the principle well settled by numerous decisions of this Court that no person has a vested interest in any rule of law entitling him to having it remain unaltered for his benefit, or, in the alternative, to have any amendments to the law made inapplicable to it. (*Traux* v. *Corrigan*, 257 U. S. 312, 348 and the cases cited therein; *Preston Co.* v. *Funkhauser*, 261 N. Y. 140; *Wasservogel* v. *Meyerowitz*, 300 N. Y. 125.) The applicability of the statutory amendments to appellant's pending proceeding is not violative of its constitutional rights. As recently as November 20, 1961 this Court in *Fruhling* v. *Amalgamated Housing Corp.*, 9 N. Y. 2d 541, appeal dismissed —— U. S. ——, gave judicial approval to the ruling of the New York Court of Appeals that:

> "Under familiar principles, we pass upon the applicability and validity of the statute as it existed on the date of this appeal, rather than the date of the commencement of this action (Strauss v. University of the State of N. Y., 2 N. Y. 2d 464, 465; Black River Reg. Dist. v. Adirondack League Club, 307 N. Y. 475, 486-487; Quaker Oats Co. v. City of New York, 295 N. Y. 527, 536)."

Appellant seeks to have this Court determine the constitutionality of segments of a statute concededly enacted for a lawful purpose. Its entire prayer for relief is

predicated upon the desirability of legislation. We respectfully submit that the proper forum for correction of legislation is a responsive legislature. *Daniel* v. *Family Sec. Life Ins. Co.*, 69 S. Ct. 550; 336 U. S. 220.

CONCLUSION

Since no substantial Federal question is presented, this Court should dismiss the appeal or affirm the judgment of the Court of Appeals appealed from.

Respectfully submitted,

HAROLD ZUCKER,
Attorney for Appellee-State Rent Commission,
280 Broadway,
New York 7, New York.

EDWARD V. ALFIERI,
Deputy Counsel,
of Counsel,
on the Brief.

APPENDIX

EXHIBIT 1

Opinion of Court of Appeals

COURT OF APPEALS, Clerk's Office,
Albany, July 7, 1961.

I. L. F. Y. Co.,

Appellant,

—v.—

TEMPORARY STATE HOUSING RENT COMMISSION, *et al.*,

Respondents.

Decided July 7, 1961.

Chief Judge DESMOND:

Plaintiff has taken a direct appeal from the court of first instance to this court (Civ. Prac. Act, § 588, subd. 4) asserting the invalidity under the Federal and State Constitutions of 1961 amendments (L. 1961, ch. 337) to the Emergency Housing Rent Control Law. While extending the control law (first enacted in 1946) to 1963, the Legislature modified the existing provisions which set up procedures whereby landlords may obtain maximum rent adjustments based on recent sale prices by providing that:

"No application for adjustment of maximum rent valuation based upon a sale price valuation shall be filed by the landlord under this subparagraph prior to six months from the date of such sale of the property. In addition, no adjustment ordered by the commission based upon such sales price valuation shall be effective prior to one year from the

date of such sale." (Emergency Housing Rent Control Law, § 4, subd. 4, par. [a], subpar. [1], cl. [v].)

As revised in 1961, the law forbade retroactive changes in rent (§ 4, subd. 4, par. [a], subpar. [6]). The 1961 amendments were applicable to pending proceedings (§ 13).

On November 19, 1960 plaintiff-appellant contracted to purchase for $1,378,000 a rent-controlled apartment house in Manhattan. Title passed on February 20, 1961 and a week later appellant filed with the Rent Commission an application under subdivision 5 of section 33 of the State Rent and Eviction Regulations for the fixation of a reasonable rent computed as 6% return on valuation of $1,378,000 as shown by the sale price. On April 6, 1961 (this suit was commenced a few days later) and before commission action on the application was completed, the 1961 amendments were enacted. Plaintiff sues for a declaration that they are unconstitutional as to it in that an increase based on purchase price of this property cannot be obtained until at least one year from the purchase date and that any such increase will be prospective only even though by the law as it existed when plaintiff bought the building such increases were retroactive to the date of the filing of the application but for not more than six months (see L. 1957, ch. 755; L. 1959, ch. 695).

Some history should be recalled. During part of the time (up to 1948) when residential rent control was governed by Federal statutes, retroactive increases were not permitted (see *Wasservogel* v. *Meyerowitz*, 300 N. Y. 125). In 1950 the State took over and from 1950 to 1951 there was a temporary freeze of New York City rents pending submission of a new State plan (see L. 1950, ch. 250). The 1951 State act (see chapter 443 of that year) provided for nonretroactive fixation of maximum rents at rates to produce a minimum return on property value but defined value generally as equivalent to the equalized tax assessment. Discretion,

however, was by the 1951 law given to the State Administrator to adopt a valuation other than the adjusted assessment in cases where there had been a sale of the property during the year next preceding March 15, 1951 (see, as to discretion, *Matter of Realty Agency* v. *Weaver*, 7 N. Y. 2d 249, 252). The 1953 statute (see chapters 320 and 321 of that year) extended residential rent control to 1955 but broadened the Administrator's powers so that he might use sale price as value where there had been a bona fide sale between March 15, 1951 and the date of the application. These increases, however, were not to be retroactive. While the 1953 statute was in effect, the administrative practice (confirmed by court decisions; see, for instance, *Matter of Wile* v. *McGoldrick*, 286 App. Div. 826, motion for leave to appeal denied 309 N. Y. 1033) was to use the purchase price as a base unless special circumstances had affected the price.

Appellant stresses the fact that the courts (see *Matter of 340 East 57th St. Corp.* v. *Weaver*, 2 N. Y. 2d 799, and *Matter of Florell Equities* v. *Weaver*, 2 N. Y. 2d 982) held entirely invalid a commission regulation adopted while the 1955 statute (identical with the 1953 act) was in effect and which prohibited the use of a sale price as the valuation base in any instance where the property had been awarded an increase in the past, and which further prohiibted the filing of an application for such an adjustment until the applicant had been owner for a year. That regulation was, however, stricken not for unconstitutionality but because it was unauthorized by statute and contrary to any ascertainable legislative intent, and so was a usurpation by the commission of legislative power.

In 1957 for the first time the Legislature dealt with "resale prices" and the fact or danger of spiraling prices on successive sales. While the use of a bona fide sales price was made mandatory instead of discretionary, the new act

(L. 1957, ch. 755) gave the Rent Administrator discretion where there had been more than one sale within two years prior to the application to "disregard the most recent of sales only if a prior sale within such two-year period was adopted as the valuation of the property" in a rent-increase proceeding. The legislative authorization to use not more than one sale in each two-year period was made in response to a recommendation by the Temporary Commission to Study Rents and Rental Conditions which had reported that the Administrator needed "authority to curb any cycle of successive sales followed by applications for adjustments" (see report, N. Y. Legis. Doc., 1957, No. 22, p. 23).

Turning now to the disputed 1961 additions, we first examine into the validity of the one-year delay and no-retroactivity rules. If these are found not to be intrinsically invalid, we must move to an inquiry as to whether they may constitutionally be made applicable to a sale arranged or consummated before the effective date of the 1961 amendments.

Appellant does not dispute the continuance of the housing emergency which is the predicate for these housing rent control laws. It cannot deny that prohibitions against rent increases may in an emergency be constitutional although they reduce the value of the property regulated and deprive its owner of what otherwise would be considered a fair return (see *Bowles* v. *Willingham*, 321 U. S. 503, 517; *Teeval Co.* v. *Stern*, 301 N. Y. 346, 362, cert. den. 340 U. S. 876). Appellant does suggest that the 1961 Legislature acted illegally when it added new "police power restraints" to the earlier controls without any new finding as to "intensification of emergency" warranting the increased restrictions. We know of no requirement for such a new declaration or description of conditions requiring tightening of controls. The real question on this branch of the

case is whether there was anything before the Legislature justifying the year-delay and nonretroactivity clauses added in 1961.

There is, of course, not only an exceedingly strong presumption of constitutionality (*Defiance Milk Products Co.* v. *Du Mond*, 309 N. Y. 537, 540) but a further presumption that the Legislature has investigated for and found facts necessary to support the legislation (*Lincoln Bldg. Associates* v. *Barr*, 1 N. Y. 2d 413; *East New York Sav. Bank* v. *Hahn*, 293 N. Y. 622, affd. 326 U. S. 230). But, besides those generalities, we have a showing that the Legislature had before it when it legislated on this subject in 1961 three different reports all made in 1961 and the minutes of a public hearing held in Albany in March of that year by the Temporary Commission (see "Survey Report on the Rental and Housing Market" of the Temporary State Housing Rent Commission, Jan., 1961; Report of Governor's Special Committee, Feb. 24, 1961; 1961 Report of the Temporary Commission to Study Rents and Rental Conditions, March 23, 1961 [N. Y. Legis. Doc. 1961, No. 23]).

Appellant says that these reports (the so-called Herman report made to the Governor by the State Rent Administrator and the report of the Governor's five-man or "Gaynor" committee) show that there had not been any widespread practice whereby rent increases were resulting from a series of successive sales at inflated prices with each resale used as a new base for rent calculation. It is true that the Herman report shows, in nine years, only a few such cases and no "widespread practice" of applications granted where there had been a prior grant on a lower sales price. However, the five-man committee's report points out that it is the legislative purpose to provide the Administrator with authority to curb any such cycle. The committee recommended, therefore, the one-year delay and no-retroactivity safeguards. A month later (March 23, 1961) the Temporary

Commission, a different body, reported to the Legislature as required by law (see L. 1948, ch. 675). In its report (N. Y. Legis. Doc., 1961, No. 23) it described public hearings held earlier that month in Albany at which much testimony had been taken. It adopted some of the five-man committee's suggestions, including those with which we are concerned and which the Rent Administrator specifically urged at the hearing. Other speakers told of the "alarming rate" at which apartment buildings were changing ownership at spiraled prices. The Mayor of New York City informed the Temporary Commission that "it is increasingly the practice to sell rent-controlled real estate at inflated prices which bear little relation to the existing rent rolls or market value" and pointed out that under the then law there was nothing to prevent an increase based on that inflated price and then another sale two years later with a similar rent increase. A representative of a tenants' association showed the committee newspaper advertisements indicating that sellers and buyers were taking advantage of this opportunity. All this shows a reasonable basis for legislative action to slow up the process—not so much to deprive owners of sales opportunities or buyers of adequate rents as to remove or prevent conditions creating inflationary spirals of prices and rents. The "actual and manifest evil" which serves as a predicate for police power law-making can consist of a well-founded fear of future trouble. Purchases of rental property at high prices predicated on immediate rent rises could defeat the proper purposes of residential rent control. Thus, the writing of these precautions into the law was, as the Legislature saw it, reasonably necessary for the public welfare. Even if there were no record of any investigation, factual support for the legislation would be assumed by the courts to exist. And so appellant would have a heavy burden as to disputing the Legislature's fact findings made after committee hearings

and reports. Surely this record does not conclusively destroy those findings and any dispute as to underlying facts could not be presented on this direct appeal which brings up constitutional questions only (Civ. Prac. Act, § 588, subd. 4).

There remains appellant's assertion that its constitutional rights were infringed when the 1961 statute was made to apply in this respect to premises purchased at an earlier date. But appellant did not have in any particular rule an interest so vested as to entitle it to keep the rule unchanged (*Preston Co.* v. *Funkhouser*, 261 N. Y. 140; *Wasservogel* v. *Meyerowitz*, 300 N. Y. 125, *supra*). In such situations the applicability and validity of statutes are determined as of the date we make our decision (*Fruhling* v. *Amalgamated Housing Corp.*, 9 N. Y. 2d 541; *Matter of Tartaglia* v. *McLaughlin*, 297 N. Y. 419; *Matter of Boardwalk & Seashore Corp.* v. *Murdock*, 286 N. Y. 494).

The judgment should be affirmed, with costs.

Judges Dye, Fuld, Froessel, Van Voorhis, Burke and Foster concur.

Judgment affirmed.

Appendix.

EXHIBIT 2

The Opinion at Special Term of Judge Greenberg

1. L. F. Y. Co. v. Temporary State Housing Rent Commission—Defendant, the Temporary State Housing Rent Commission, and, by separate motion, the co-defendant move for dismissal of the complaint pursuant to Rule 106 (4). The Emergency Housing Rent Control Law (Chapter 274 of the Laws of 1946, as amended) was further amended (Chapter 755 of the Laws of 1957, as amended by Chapter 695 of the Laws of 1959) and provided for mandatory individual adjustment of maximum rent where the rental income yields a net annual return of less than 6 per cent. per annum of the valuation of the property based upon a bona fide sale of the property within a stated period as defined. Complaint is made of still further amendment by action of the 1961 Legislature (Chapter 337 of the Laws of 1961) in extending the Act to June 30, 1963. By such amendment, it is provided that "No application for adjustment of maximum rent based upon a sales price valuation shall be filed by the landlord under this sub-paragraph prior to six months from the date of such sale of the property," and further that "In addition, no adjustment ordered by the commission based upon such sales price valuation shall be effective prior to one year from the date of such sale." In three causes of action, plaintiff urges unconstitutionality in that it cannot obtain an increase based on the purchase price until one year from the date of its purchase, that orders of adjustment when issued are prospective only, and the amended statute applies to applications retrospectively. Claim of unconstitutionality is based upon the contention that the Legislature failed to set forth additional findings of emergency necessitating intervention of the police power warranting such amendments and they are therefore without support. In Teeval Co., Inc., v. Stern (301 N. Y. 346 [1950 certiorari de-

nied 340 U. S. 876]), the court stated: "In the view of the plaintiff landlord, the State rent control statute will deprive it of a 'fair return' on its investment. If that point can be considered at all on this direct appeal (see Lapchak v. Baker, 298 N. Y. 89, 80 N. E. 2d 751, supra), the answer is plain. The state rent control statute was enacted to meet a passing emergency. It does not contemplate a taking of the property of any landlord. Even though it may now and then, compel an owner to operate his real property at a loss, the statute is not for that reason to be condemned as an arbitrary use of the police power (Bowles v. Willingham, 321 U. S. 503, 516-519, 64 S. Ct. 641, 88 L. Ed. 892)." No challenge is raised to the continuing emergency warranting police power intervention, but rather the challenge is directed to the failure to make additional legislative findings as to the particular amendment. The power to legislate with respect to the emergency is not spent merely because the Legislature has once before mandated upon the particular subject. The motion is granted and the complaint is dismissed.

I. L. F. Y. Co. v. Temporary State Housing Rent Comm'n —Defendant Meehan moves for dismissal of the complaint pursuant to Rule 106(4). The motion is granted and the complaint is dismissed. See disposition of companion motion published simultaneously herewith.

Appendix.

EXHIBIT 3

Challenged Provisions of the Statute

Pertinent provisions of the Emergency Housing Rent Control Law of the State of New York, as amended (Chapter 337, Laws of 1961).

Subdivision 4(a)(1) of Section 4 of the Emergency Housing Rent Control Law as amended on April 20, 1961, provides:

> "No application for adjustment of maximum rent based upon sales price valuation shall be filed by the landlord under this sub-paragraph prior to six months from the date of such sale of the property."

Said subdivision further provides that:

> "In addition no adjustment ordered by the commission based upon such sales price valuation shall be effective prior to one year from the date of such sale."

Subdivision 4.6 of Section 4 of the amended statute provides as follows:

> "No increase or decrease in maximum rent shall be effective prior to the date on which the order therefor is issued."

Section 13 of the statute and of the amended statute provides in part as follows:

> "Pending proceedings. The commission may provide for and authorize the continued processing of any application or proceeding pending at the time this act becomes effective; provided, however, that final determination of the commission in such pending application or proceeding shall not be inconsistent with this act."